Supreme Court, U.S.
FILED

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03 273 AUG 20 2003

No._____

In The
Supreme Court of the United States

Jane Gross
Petitioner,

V.

Fred Irtz, Administrator
Respondent,

On Petition For a Writ of Certiorari
To The Supreme Court of Kentucky

PETITION FOR WRIT OF CERTIORARI

Jane Gross pro se
6718 Russell Cave Road
Lexington, Kentucky 40511
(859) 299-6109

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66 pp

QUESTIONS PRESENTED

Whether the Courts below have the power and authority to use coercion and extortion to force petitioner to sign an Express Waiver that is guaranteed by the Federal Constitution of the United States to surrender petitioner's legal rights?

Whether the District Court lost jurisdiction pursuant to the Fifth and Fourteenth Amendments of the Constitution. In petitioner's case ten days after entry of final and appealable order?

Whether the petitioner has a Constitutional right to an unbiased court and due process of law pursuant to the Fifth and Fourteenth Amendment to the Constitution of the United States?

Whether the petitioner has a Constitutional right to competent counsel pursuant to Sixth Amendment to the Constitution of the United States?

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, counsel for Attorney Fred Irtz, Administrator for the Estate of Caleb P. Gross, Robert C. Monk is attorney of record Case. No. 2002-SC-0369-D Kentucky Supreme Court and (2002 CA-0200) Kentucky Court of Appeals. Robert Monk, P.O. Box 910478 Lexington, Kentucky 40591-0478.

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OPINIONS BELOW

The opinion of the Kentucky Supreme Court is reproduced in appendix at Pet. App. 1. The opinion of the Court of Appeals is reproduced in the Appendix at Pet. App. 2.

JURISDICTION

The order denying Discretionary Review by the Supreme Court was entered on June 3, 2003. This court has jurisdiction under 28 USC Section 1257.

CONCISE STATEMENT OF CASE

On June 5, 1991, Petitioner Jane Gross' Grandfather C.P. Gross died. He willed Jane and five other grandchildren $10,000 each. August 9, 2000 the administrator mailed Jane a check for $4,091.67. , stating the remainder of her inheritance would be used for other issues. The administrator was trying to cheat Jane out of thousands of dollars she hired Attorney Steve Wides to retrieve her inheritance.

Mr. Wides filed Motion for Hearing on February 7, 2001 for $10,000 at 8% interest, and all participating heirs filed support motions. The court granted said motion on February 7, 2001 Mr. Wides mailed Jane a prepared order for the court to sign. He did not present order to the court App.21-22. For five weeks Jane's calls were refused Mr.Wides finally accepted Jane's call stating that he was filing a motion to get Jane's money.

On April 2, 2001, the court signed order prepared in February 2001 App.23-24. Mr. Irtz refused to comply with this order. Steve Wides refused to file for judgement. Mr. Wides refused to accept any more of Jane's calls.

Jane filed a pro se motion for the court to enforce its order of April 2, 2001 and grant Jane 12% interest on

her money. At hearing on July 11, 2001 with Jane's attorney - present the administrator gave an excuse that he did not know he had to pay Jane in cash. The court replied " what were you going to pay her with ice water?"

On July 30, 2001 per Jane's motion the court entered a final and appealable order. App 18-19 which states in paragraph 2, " that it is the order of this courts that there are enough cash funds in the estate to have the Administrator, Fred Irtz immediately disburse, in cash, to the specific legatees under Article III in the above referenced Last Will and Testament, the total is $17, 338.81 to each beneficiary, except Caleb Gross, II, whose amount is $17,203.96 only to the offsets of sums previously paid to or on their behalf.." No real proof was presented that the funds were in the estate. Fred Irtz has never filed a periodic accounting.

On January 29, 2001, Eugene Gross, son of C.P. Gross filed pleading with the court for Fred Irtz to file an accounting. The court refused to issue an order.

Fred Irtz refused to comply with order of July 30, 2001 to immediately disburse to Jane $17,338.81. Steve Wides refused to file motion for Judgment.

On August 29, 2001, Mr. Wides raised the issue of a Receipt of Share and Waiver. This issue had never been before the court. Jane's attorney tried to coerce her to sign an Express

Waiver. A voluntary and intentional waiver. In signing the waiver Jane would be losing her legal rights as follows:

1. To have Fred Irtz file a periodic accounting of the Estate as required under KRS 395.610 and 395.605 which Jane's attorney refused to do.
2. The fact that the probate court lost jurisdiction in the case.
3. Jane's right to appeal the case. In that Jane was forced to sign the waiver this preserved her right to appeal.
4. To further proceed or participate in the administration of the Estate, which has an odor since May 2, 1997.
5. To collect the proper amount of money due to Jane and others.
6. That her attorney became incompetent in this case.

Jane refused to sign said waiver.

On August 31, 2001, 32 days after final and appealable order was entered Mr. Wides filed a motion requesting the court for direction and an order as to the execution of an attached waiver for hearing on October 3, 2001 App. 10,11,12.

Willard Gross, son of C.P. Gross, on September 26, 2001 filed a response to said motion App.13,14,15. Stating the court lost jurisdiction of this case 10 days after entry of final and appealable order and moved the court to dismiss said motion.

Under Rule 59.05 Motion to alter or amend or vacate a judgment or to vacate and enter a new one shall be served no later than 10 days after final judgement. Under *Commonwealth V. Gross* No. 95-SC-773-DG Supreme Court of KY on October 24, 1996-rehearing denied on January 30, 1997 held that trial court acted beyond its jurisdiction authority in granting probation under KRS 439.265 in that the ten-day time limit under this rule had expired *Commonwealth V. Gross* 936 S.W. 2d 85 (1996).

Willard Gross n September 26, 2001 filed motion for a periodic accounting under KRS 395.610 to be heard on October 3, 2001 App. 16,17.

At hearing on October 3, 2001 Judge Horne issued on oral order to Jane Gross that she either sign the waiver or give up your inheritance, "Which do you want to do?" Jane addressed the court claiming interest on her money from July 30, 2001 to October3, 2001. Jane's attorney, Mr. Wides who led the parade to force his own client to sign an unconstitutional waiver ask the court to deny Jane this interest. It was not Jane's fault that Fred Irtz and Steve Wides had delayed this case.

Under the coercion and extortion used by Judge Kevin Horne. Jane was forced to swear a false oath when she signed the waiver on October 5, 2001 App.8,9. Jane and others needed their inheritance. They also were forced to swear a false oath.

The court overruled Willard's motion for a periodic accounting, stating Fred Irtz could file his accounting at the conclusion of this case this is in violation of KRS. 395.610. The court refused to issue an order thereby stopping an appeal.

On October 4, 2001, App.5,6,7. Judge Horne entered an order reaffirming his oral order he made to Jane. The court did not make a ruling on interest claimed by Jane. This order was entered by Mr. Wides one day after the court made its ruling!

Jane in her pro se appeal incorporated Willard's response and his motion for accounting as part of her appeal to the Circuit Court of Appeals.

Jane's case was heard by Circuit Court Judge John Adams who presided over *Commonwealth V. Gross* jurisdiction case. The Supreme Court of KY reversed his decision 6-0.

Judge Adams raised the issue of coercion committed by Judge Horne. Jane stated the action that Judge Horn had taken that Jane either signs the waiver or give up her inheritance, "which do you want to do?"

Judge Adams asked Robert Monk, Attorney for Fred Irtz if the District Court used the coercion that Jane stated Mr. Monk stated that he did.

Judge Adams asked if he knew why Judge Horne did this, Mr. Monk stated that he did not know. Mr. Monk and Judge Adams both knew or should have known the reasons, (1) to protect Fred Irtz from having to file a periodic account of the Estate. (2) that the court had lost jurisdiction in this case. (3) Judge Horne, Fred Irtz, and Steve Wides, were totally biased against Jane Gross.

Jane raised the issue of jurisdiction reading Rule 59.05 and *Commonwealth V. Gross* supra into the record. Judge Adams raised the issue of interest on Jane's money. Jane admitted that she received money stated in waiver not that it was correct.

The court order of July 30, 2001 granted Jane $17, 338.81. The waiver gave Jane $17,179.66. Jane claimed interest on her money from July 30, 2001 to date of order October 4, 2001 this brought money owed to Jane $17, 483.00 a difference of 304.47 x 6= $1826. 32 that is lacking from the waiver.

Judge Adams ERRED in refusing to issue an opinion

and order to the fact Judge Horne used coercion and extortion to force Jane to sign an unconstitutional waiver. Judge Adams ERRED in refusing to issue and opinion and order to the fact the probate court lost jurisdiction in this case.

Judge Adams ERRED in dismissing Jane's appeal App. 3 that she had received all monetary compensation that she was entitled to. This was a misstatement. The Court states that Jane received 8% interest through date of payment, which was October 5, 2001, and the payment does not coincide with Mr. Irtz's payment and states that Judge Horne addressed this issue.

Judge Horne did not raise the issue of interest or monetary in his order on October 4, 2001. The last time he raised this issue was in his order on July 30, 2001 when he ordered Fred Irtz to immediately disburse to Jane $17,338.81.

The Court of Appeals denied Jane's motion for review on April 11, 2002 App.2. Former district Judge Julia K. Tackett now a member of the Court of Appeals set in judgement of her two appointees.

1) Fred Irtz on May 2, 1997 as Successor Executor without taking
the oath of office filing an application, no hearing, and without the will annexed, leaving Mr. Irtz without power or authority over the estate KRS 395.050 App25.

2) Judge Tackett assigned Judge Kevin Horne to this case and recused herself in that she had conflict in the same order issued by Judge Tackett on May 2, 1998 App.26.

3) Judge Tackett appointed Fred Irtz a second time without the will annexed this time as administrator under a Fiduciary Bond Form which list 4 statutes. Judge Tackett made this appointment retroactive to May 2, 1997.This is in violation of KRS 446.080 and *Sparks V. Craft* 75 F 3d (6 cir 1996) holds no statue shall be construed to be retroactive unless expressly so declared App. 27,28, 29. App.29 falsely states it was filed, entered and sworn to on May 2, 1997. The completion of this fiduciary form was in February 2000.

4) Judge Kevin Horne, Judge Tackett's appointee, on April 17, 2000 appointed Attorney Fred Irtz a third time as Administrator, by reaffirming his first and second appointments which were VOID the day they were issued. Again Fred Irtz did not take the oath of office under KRS 62.030 and 395.120.

Attorney Fred Irtz's third appointment as administrator is still void. Judge Horne cannot take void appointments and revive them.

Code of Judicial Conduct under SCR 4.020 (2) Cannons (1) (2) (3). Judge Tackett has not upheld the integrity and independence of the court and shows impropriety's *Dixon V. Commonwealth* 890 S.W. 2d 629 (Ky ct app.1994).

When Judge Tackett presided over this case from April 9, 1997 to May 5, 1998 she granted her appointee Fred Irtz thousands upon thousands of dollars in unlawful and un-deserving fees. In this Jane and the heirs need a full accounting of the estate which Judge Horne has denied 3 times in violation of KRS 395.610.

Judge Tackett and her appointee Fred Irtz administrator knows that Mr. Irtz has never filed a motion for substitution as real party in interest in the Circuit Court, Court of Appeals and the Supreme Court of Kentucky and that all three courts have never issued an order substituting Fred Irtz as a real party in interest in the Estate of C.P. Gross in this Fred Irtz is in violation Rule 76.24 (b) (a) Rule 17.01, Rule 25 and has no standing in all three courts.

Judge Tackett and Fred Irtz also know that District Judge Tackett did not issue an order to dismiss Eugene Gross as Executor of C.P. Gross' Estate. Eugene Gross is still Executor of Record of the Estate. Fred Irtz 3 appointments are legally void. Mr. Irtz has no standing in the Estate of C.P. Gross.

In that Judge Tackett sit in judgement of her two appointees this opened the door for Jane to raise the above issues. Jane raised these issues before the Supreme Court of Kentucky.

Fred Irtz responded stating Jane's review to the Supreme Court is frivolous and ask for damages under Rule 11 and for Jane to file a $20,000 bond before she advanced to the United States Supreme Court. The Supreme Court of Kentucky denied Fred Irtz's request App.1.

REASONS FOR GRANTING THE WRIT

(1) A waiver is a party's Constitutional right.

(2) A waiver is a party's voluntary and intentional relinquishment of a known legal right.

(3) A waiver operates to prevent the loss of existing legal rights guaranteed by the Federal Constitution. 28 Am Jur.2d sections 197 and 213.

District Judge Kevin Horne violated Jane Gross's Constitutional right, in that he used coercing and extortion when Judge Horne gave Jane Gross an oral order on October 3, 2001 that she either sign the waiver or give up her inheritance of $17, 338.81 "which do you want do?"

On October 4, 2001 Judge Kevin Horne entered an order reaffirming his oral order he made to Jane Gross on October 3, 2001.

Under Coercion and extortion used by Judge Horne, Jane and others were forced to hold up their hand and swear a false oath when they signed the express waiver on October 5, 2001.

Jane's Attorney Steve Wides on August 31, 2001, 32 days after the final and appealable order was entered on July 30, 2001 filed a motion requesting the court for directions and an order as to the execution of an attached waiver to be heard on October 3, 2001. This motion should have been filed by Fred Irtz in that it is his waiver. Mr. Wides position should have been to oppose the motion.

Willard Gross on September 26, 2001 filed a response moving the court to dismiss Mr. Wides motion stating the District Court lost jurisdiction of this case 10 days after entry of Final and Appealable Order was issued on August 31, 2001. Nothing can be added or subtracted to this order.

Under Civil Rule 59.05 Motion to alter or amend or vacate and enter a new one should be serviced no later than 10 days after final judgement.

Commonwealth V. Gross No. 95-SC-773-DG Supreme Court of KY on October 24, 1996 rehearing denied on January 30, 1997 holds that trial court acted beyond its jurisdictional authority in granting probation under KRS 439.265 in that the 10 day time limit under this rule had expired *Commonwealth V. Gross* 936 S.W. 2d85 (1996).

In this Judge Horne knowingly used coercion and extortion to force Jane to sign an unconstitutional waiver after the district court had lost jurisdiction of this case.

The Circuit Court of Appeals denied Jane Gross DUE PROCESS of RULES and LAWS of the Court under the FIFTH and FOURTEENTH AMENDMENTS of the CONSTITUTION when the court refused to issue and opinion and order to the fact that Judge Horne used coercion and extortion to force Jane Gross to sign an unconstitutional waiver and refused to issue an opinion and order in the fact that the district court lost jurisdiction of this case.

The court showed extreme bias when the two appointees of Judge Julia K. Tackett, Fred Irtz and Kevin Horne acted as prosecutor and Judge in this case and very extreme bias, prejudice an predisposition against Jane Gross when Court of Appeals Judge Julia K. Tackett sit in judgement of her two appointees. When Judge Kevin Horne, Fred Irtz, and Jane attorney, Steve Wides teamed against Jane the full court was totally biased against Jane Gross.

Jane Gross filed her objection in the above matters in her review to the Supreme Court of Kentucky.

INCOMPETENT COUNSEL

Administrator Fred Irtz on August 9, 2000 mailed Jane and 5 other grandchildren a check for $4, 091.67. He stated that

the remainder of their inheritance of $10,000 would be used for other issues. Jane and others refused to cash said check.

In this Fred Irtz was cheating Jane and 5 other grandchildren out of $35,550.00 plus interest on $60,000 for 9 years. Jane hired Attorney Steve Wides to retrieve her and other their inheritance.

After a delay of 5 months, Mr. Wides filed a motion with the court for $10,000 plus 8% interest starting one year after probate. All participating heirs filed motions in support of Mr. Wides motion. Said motion was heard on February 7, 2001. The court granted his motion for $10,000 plus 8% interest starting 1 year after probate.

Mr. Wides mailed Jane a copy of the order App.21,22. he prepared for the court to sign in February 2001. At this point the case of the grandchildren's inheritance should have been put to rest.

This did not happen because Mr. Wides did not present this order for the court to sign to collect Jane's money or file motion for Judgement at 12% interest.

This is the start of the conspiring between Fred Irtz, Steve Wides, and others, and the start of Jane's road to the Supreme Court.

Mr. Wides refused to take Jane's calls for 5 weeks. Finally Mr. Wides accepted Jane's call and stated that he was filing a motion to get Jane's money. Mr. Wides filed said motion On April 2, 2001 the court signed the order Mr. Wides prepared in February 2001 App. 23,24.

Fred Irtz refused to comply with the Court's order of April 2, 2001. Mr. Steve Wides refused to file for judgement and 12% interest.

Mr. Wides refused to accept any calls from Jane. After 3 months Jane filed a pro se motion to be heard on July 11, 2001 for the court to enforce it order of April 2, 2001and to grant Jane 12% interest on her money.

At hearing on July 11, 2001 with Jane's attorney present the administrator, Fred Irtz gave an excuse that he did not know he had to pay Jane in cash. The court replied "what were you going to pay her with Ice Water?"

The court asked Mr. Irtz if there was enough cash funds in the Estate to pay the grandchildren their inheritance. Mr. Irtz indicated that there was. No proof was presented. At this point Mr. Wides should move the court for judgement and 12% interest.

On July 30, 2001 per Jane's pro se motion, the court entered a final and appealable order App.18,19,20. Stated in paragraph 2.

That it is the order of this court that there is enough cash funds in the estate presently to have the administrator, Hon. Frederick Irtz II, immediately disburse, in cash, to the specific legatees under Article III in the above referenced last will and testament the total is $17,338.81 to each beneficiary, except Caleb Gross II was amount $17,203.96 subject only to the offset previously paid to or on their behalf. This is a final and appealable order on July 30, 2000 App.18,19,20.

Jane thought she and others would receive their money in a very short time. This did not happen. Again, Fred Irtz refused to comply with the courts order of July 30,2001 and again Steve Wides refused to file for judgement at 12% interest on her money.

On August 29, 2001, Mr. Wides raised the issue of a receipt of Share and Waiver this 30 days after the Final and Appealable order had been issued on July 30, 2001 the issue had never been before the court. Mr. Wides and another Attorney present tried to coerce Jane into signing this waiver in which would be surrendering Jane's legal rights.

Jane refused to sign the waiver.

On August 31, 2001 32 days after the Final and Appealable Order was entered. Mr. Wides filed a motion requesting the court for directions and an order as to execution of an attached waiver. This motion should have been filed by the

administrator Fred Irtz as it was his waiver. Mr. Wides should have opposed this motion.

Willard Gross on September 26 filed a response for the court to dismiss Mr. Wides motion for Lack of Jurisdiction under Civil Rule 59.05 motion to alter or amend or vacate a judgment and enter anew one shall be served not later than 10 days after entry of final order.

Commonwealth V. Gross No. 95-SC-773-DG Supreme Court of Kentucky October 24, 1996 rehearing denied January 30, 1997 holds trial court acted beyond its jurisdiction authority in granting probation under KRS 4 39265, in that the ten-day time limit under this rule had expired Commonwealth V. Gross 936 S.W. 2d 85 (1996).

The Court, Fred Irtz, and Jane's attorney Steve Wides after being advised that the court lost jurisdiction in the case. On October 3, 2001. The court held a hearing and ignored the jurisdiction issue.

Judge Kevin Horne issued an oral order to Jane that she either sign the waiver or give up her inheritance of $17, 338.81, "Which do want to do?" Mr. Wides refused to protect his client.

Jane moved the court for interest on her money from July 30, 2001 to October 3, 2001. Jane's attorney opposed his client and ask the court to deny Jane this interest. It was not Jane's

fault that Fred Irtz and Steve Wides had prolonged this case from August 9, 2000 to October 3, 2001. Jane is due this interest.

It was Mr. Wides duty to represent his client fairly and properly. If Mr. Wides had been honest with his client he would carry out Jane's constitutional right and filed a motion for a periodic accounting on behalf of his client and collect her money or a judgement for her money at 12% in February 2001. The actions that Mr. Wides has taken against his client has allowed Fred Irtz to charge the Estate of C.P. Gross upwards of $10,000 may be more.

It will not be known until Fred Irtz or more likely a substitute, as Fred Irtz has proved himself not to be an Honorable Attorney in this case, files a periodic accounting of the Estate in which Fred Irtz is in violation of KRS 395.610 and 395.605.

In the above Attorney Steve Wides has proved himself to be incompetent or a shady attorney in this case.

CONCLUSION

This case presents serious violation of petitioner's Constitutional rights. Petitioner was forced to sign an Expressed Waiver thereby surrendering her legal constitutional rights in this case. The lower court lost jurisdiction in this case and refused to issue a ruling to this fact. The lower courts were totally biased against petitioner including her attorney denying petitioner due process.

Petitioner respectfully requests this court grant certiorari to review the issues. To improve the lower courts respect for the United States Constitution.

Jane Gross

Jane Gross, pro se
6718 Russell Cave Road
Lexington, KY 40511

SUPREME COURT OF KENTUCKY

2002-SC- 0369-D

(2002-CA-0200)

JANE GROSS — MOVANT

V — FAYETTE CIRCUIT COURT

NO. 2001-XX-0060

FRED IRTZ, ADMINISTRATOR
ESTATE OF CALEB P. GROSS — RESPONDENT

ORDER

The motion to intervene by Eugene Gross is denied.

The motion for review of the decision of the Court of Appeals is denied.

Respondent Irtz's request for damages and Rule 11 sanctions is denied.

Keller, J., not sitting.

ENTERED June 4, 2003.

_____

Chief Justice
Joe Lambert

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 2002-CA-000200-D

JANE GROSS — MOVANT

V. ON MOTION FOR DISCRETIONARY REVIEW
FROM FAYETTE CIRCUIT COURT
01-XX-00060

FRED IRTZ, ATTORNEY — RESPONDENT

****

ORDER DENYING DISCRETIONARY REVIEW

BEFORE: GUDGEL, CHIEF JUDGE; BARBER AND TACKETT, JUDGES

Having considered the motion for discretionary review and the response thereto, and being sufficiently advised, the court ORDERS the motion be DENIED.

ENTERED: APR 11 2002

JUDGE, COURT OF APPEALS

FAYETTE CIRCUIT COURT
APPEAL BRANCH
FOURTH DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS
DECEDENT

Appeal from District Court
No. 91-P-1247 **NO. 01-XX-60**

ORDER

****

The Appellee, The Estate of Caleb P. Gross, through its representative Frederick G. Irtz, II, Administrator with Will Annexed, moves the Court to dismiss an appeal by Jane Gross.

Jane Gross had appealed orders of the Fayette District Court, the Honorable Kevin Horne, presiding, relative to the execution of a waiver in exchange for distribution under the estate.

The Court, on Friday, December 28, 2001, heard arguments of counsel for the estate as well as Jane Gross, pro se. Considering the content of those arguments and the respective pleadings filed to date, which include Statement of Appeal from the Appellant, Jane Gross, and the Motion to Dismiss by the estate, IT IS HEREBY ORDERED that this appeal be DISMISSED.

It is quite evident from the record that Jane Gross, by her own admission received the monetary compensation that she was entitled to, including eight percent interest from one year from the probate of the Will through the date of the payment. Actually, the date of payment does not coincide with

the tendered date payment by Mr. Irtz, Administrator with Will Annexed, but Judge Horne addressed that issue, and the court finds no abuse of discretion in his denial of additional interest since the Appellant refused the tender of the full amount due and owing at that time.

The Appellant mistakes interest at twelve percent allowed on a judgment with her entitlement to twelve percent on an order entered on February of 2001 by Judge Horne.

For the foregoing reasons, the appeal is DISMISSED on motion of the estate.

_____

JUDGE, FAYETTE CIRCUIT COURT

Attested copies to:
Judge Kevin Horne
Hon. Robert Monk
Mr. Willard D. Gross
Hon. Thomas Burnett
Mr. Eugene Gross
Ms. Lillian A.Gross Feghali
Ms. Jane LeMay Gross

On this 3rd day of January, 2002

WILMA F. LYNCH, C.F.C.C.
BY_____D.C.

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION
CASE NO: 91-P-1247

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECENT

ORDER

****

This matter having come before the Court upon the Motion of the Counsel for the grandchildren as specific legatees, William W. Gross, Jane L. Gross, Caleb P. Gross II, and Willard D. Gross II, for direction as to the execution of a Receipt of Share and Waiver document; and there being present before the Court, the Hon. Steven A. Wides for and on behalf of the above named legatees, Willard D. Gross, Hon. Frederick G. Irtz, II, the Administrator and Hon. Robert Monk, counsel for Administrator, and the Court having heard argument of counsel, **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

1. That the specific legatees, represented by Hon. Steven Wides, to wit: William W. Gross, Willard D. Gross II, Jane L. Gross, and Caleb P. Gross II, are hereby directed to sign the Receipt of Share and Waiver document within ten (10) days from the date hereof.

2. In the event the Receipt of Share and Waiver document is not executed within the time frame stated herein above, then Counsel for the above named specific legatees is

hereby directed to return the money to the administrator, Hon.Frederick G. Irtz, II, and for him to administer those funds as if they revert to the residuary clause of the Estate.

DATED this the 4th day of October, 2001.

_____

JUDGE, FAYETTE DISTRICT COURT

TO BE ENTERED

_____

HON. STEVEN A. WIDES

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been sent to the following on this the 4th day of October, 2001.

Eugene Gross, P.O.Box 1304, Harlan, KY 40531
Lillian Feghali, P.O. Box 697, Caywood, KY 40815
Robert Monk 180 Prosperous Place Suite 100 Lexington, KY 40509
Hon. Steve Wides, 107 Church Street Suite 200, Lexington, KY 40507
Hon. Frederick G. Irtz, II, 111 W. Short Street, Lexington, KY 40507

Willard D. Gross, 6718 Russell Cave Road Lexington, KY 40511
Jane Gross,6718 Russell Cave Road Lexington, KY 40511
William Gross,6718 Russell Cave Road Lexington, KY 40511 Caleb Gross, 116 Dundee Drive, Lexington, KY 40517
Willard Gross, 1211 North Court, Lexington, KY 40505

_____

CLERK, FAYETTE DISTRICT COURT

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEASED

NO. 91 P 01247

RECEIPT OF SHARE AND WAIVER

I the undersigned, beneficiary of the Estate of Caleb P. Gross, Deceased and not being under disability, do hereby severally acknowledge that I have received two checks from Frederick G. Irtz, II Administrator, in the amounts of $4,091.67 and $13,087.66 which represent my entire cash distribution from the estate and that I am not entitled to an additional distribution from this estate, and hereby expressly waive the requirement of a formal settlement, as required by KRS 395.610, Frederick G. Irtz, II in his capacity as Administrator of said estate and request that the Administrator of said estate be permitted to file an informal settlement as it relates to me pursuant to KRS 395.605. I further waive any right to further proceed or participate in the administration of this estate including all required notices after this date.

I state that I have read the foregoing settlement, that the statements contained therein are true and that I have received a copy of same.

Jane Gross

COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

Subscribed and sworn to before me by Jane Gross on Oct. 5, 2001.

NOTARY PUBLIC,
State at Large Kentucky
4-28-04

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION
CASE NO. 91-P-1247

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDENT

MOTION

****

Comes the undersigned, STEVEN A. WIDES, as counsel for William Wallace Gross, Jane L. Gross, Caleb P. Gross, II and Willard Donald Gross, II, and respectfully requests the Court for direction and an Order as to execution of the attached Receipt of Share and Waiver documents.

In support hereof the undersigned states as follows:

1. That on or about April 2, 2001 an Order was entered herein providing that the above named specific legatees would receive interest on their bequest pursuant to Article III of the Last Will and Testament of Caleb Powers Gross, Decedent.

2. Thereafter on or about July 30, 2001 an Order was entered which specified the amount of money each specific legatee as nominated under Article III of the Last Will and Testament, would receive in cash, subject only to the offsets of sums previously paid to or on their behalf.

3. Subsequent to the entry of the Order, the Hon. Frederick G. Irtz II, as Administrator of the above named Estate did deliver to Counsel for the specific legatees their distributive shares along with a specific Receipt of Share and Waiver for each Beneficiary to execute.

4. After some discussion and concerns about the

wording thereof, the Administrator redrafted the "Receipt of Share and Waiver" documents and forwarded them to the undersigned Counsel for the Specific Legatees on or about August 20, 2001.

5. That the undersigned, after meeting his client, Jane Gross and her father, Willard Gross was appraised of her and her brother's hesitance in executing the attached Receipt of Share and Waiver document. The said document is attached hereto as Exhibit A.

WHEREFORE, the undersigned as counsel for and on behalf of the named beneficiaries, would respectfully request the Court as follows:

(a) For direction as to whether the beneficiaries are required to execute the attached Exhibit A prior to receiving their last distributed share.

RESPECTFULLY SUBMITTED

HON. STEVEN A.WIDES
107 CHURCH STREET
SUITE 200
LEXINGTON, KY 405007
(859) 231-9933

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been sent to the following on this the 31 day of August 2001.

Hon. Frederick G. Irtz, II, 111 W. Short Street, Lexington, KY 40507

Hon. Robert Monk, 180 Prosperous Place, Suite 100, Lexington, KY 40509
Willard D. Gross, 6718 Russell Cave Road Lexington, KY 40511
Jane Gross,6718 Russell Cave Road Lexington, KY 40511
William Gross,6718 Russell Cave Road Lexington, KY 40511

_____
CLERK, FAYETTE DISTRICT COURT

NOTICE

All parties please take notice that the foregoing Motion will be heard on Wednesday October 3, 2001 at the hour of 8:30 am or as soon as counsel may be heard.

_____
Steven A. Wides

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDENT
CASE NO. 91-P-1247

RESPONSE TO MOTION

Comes Willard D. Gross, pro se and files his response to motion requesting the court for direction and an ORDER as to execution of share and waiver documents and states as follows:

On July 30, 2001 this court issued a final and appealable order in this case and on August 31, 2001 Attorney Steve Wides filed a motion for direction and an order this being 32 days after the final and appealable order was issued. This order did not contain anything about a share and waiver order.

This court lost jurisdiction in the case 10 days after issuing the final and appealable order. Nothing can be added or subtracted to this order.

Under Rule 59.05 Motion to alter or amend or vacate a judgment. A motion to alter or amend a judgement, or to vacate and enter a new one, shall be served no later than 10 days after entry of final judgment.

Under *Commonwealth V. Gross* No. 95-SC-773-DG Supreme Court of Kentucky October 24, 1996 rehearing denied January 30,1997 holds trial court acted beyond its jurisdictional authority in granting probation under KRS 439.265, in that the ten-day time limit under this Rule had

expired. *Commonwealth V. Gross* 936 S.W. 2d 85 (1996).

Relying on CR 59.05, the Commonwealth argues that the trial court lost jurisdiction to alter, amend or vacate the judgement after the expiration of ten days of its entry. *Silverburg V. Commonwealth,* Ky., 587 S.W. 2d 241 (1979); *McMurray V. Commonwealth* Ky. App., 682 S.W. 2d 794 (1985). In Silverburg, the court addressed whether the trial court could modify a one-year felony sentence to a sentence of ten months in a county jail, 38 days after the judgment of conviction had been entered. In holding the renewed sentence to be improper, the court stated.

The judgement and sentence on the perjury conviction was entered by the trial judge on May 11, 1976... The trial judge on June 21, 1976, entered an order modifying the perjury sentence.... Where the Criminal Rules do not provide a time, The Civil Rules shall apply. RCR. 1.10 CR 59.05 provides that a judgment may be altered, amended or vacated withing ten days after the entry of final judgment. The order June 21, 1976, was entered 38 days subsequent May 14, 1976 judgment. The court lost jurisdiction of the case and the entry of the order modifying the sentence are void.

Similarly, the Kentucky Court of Appeals reiterated this point in McMurray wherein the Court of Appeals held void renewed final sentence judgment wherein the trial court increased the sentence after discovering a prior criminal record of defendant previously disclosed. Not with standing the oversight, the Court of Appeals afforded the trial court no discretion of this issue and held that CR 59.05 barred the amended sentence.

WHEREFORE, under Rule 59.05 and the above law, Willard Gross moves the court to dismiss Attorney Wides motion for lack of jurisdiction.

Submitted by,

_____

Willard D. Gross, pro se
6718 Russell Cave Road
Lexington, KY 40511

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been sent to the following on this the26 day of September 2001.

Fayette District Court, Probate Division 136 MLK Blvd. Lexington KY 40507
Steve Wides, 107 Church St.,Lexington KY 40507
Robert Monk, 180 Prosperous Place, Suite 100, Lexington, KY 40509
Thomas Burnett, 156 Market St. Lexington, KY 40507
Eugene Gross, P.O. Box 1304, Harlan, KY 40831
Lillian Feghali, P.O. Box 697, Cawood KY 40815

_____

Willard D. Gross, pro se

COMMONWEALTH OF KENTUCKY
FAYETTE DISTIRCT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDEN
CASE NO. 91-P-01247

MOTION FOR PERIODIC ACCOUNTING

Comes Willard D. Gross, pro se son and heir of Caleb P. Gross and moves the court under KRS.395.610 to issue an order for the administrator to file a full and complete accounting of C.P. Gross' estate with the court and service to Willard D. Gross within 15 days.

Submitted by,

Willard D. Gross, pro se
6718 Russell Cave Road
Lexington, KY 40511

NOTICE AND CERTIFICATE

Please take the notice that the foregoing Motion will come on for a hearing on October 3,2001 at the hour of 8:30 am.

I hereby certify that a true copy of the foregoing instrument was served upon all persons listed by mailing a copy of same this the 26th day September,2001. Fayette District Court, Probate Division 136 MILK Blvd. Lexington, KY

Steven A. Wides, 107 Church St., Lexington, KY 40507
Robert Monk, 180 Prosperous Place Suite 100, Lexington, KY 40509
Thomas Burnett, 156 Market Street, Lexington, KY 40507
Eugene C. Gross, P.O. Box 1304, Harlan, KY 40831
Lillian A. Feghali, P.O. Box 697, Cawood, KY 40815

_____
Willard D. Gross, pro se

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION
CASE NO: 91-P-1247

IN RE THE ESTATE OF CALEB POWERS GROSS,
Decedent

ORDER

* *** * *** ***** * * *** ***** * * *** * **** * * * ** *

This matter having come before the Court upon the Granddaughter's Motion to enforce the Court's Order, and the Court having heard argument of the Administrator and counsel for the specific beneficiaries under Item III of the Last Will and Testament of Caleb Powers Gross, and being otherwise sufficiently advised, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That each of the specific legatees as nominated under Item III of the Last Will and Testament of Caleb P. Gross shall receive their specific bequest of$10,000.00 each, along with accrued interest thereon at the rate of 8% per annum not to be compounded annually.

2. That it is the order of this Court that there is enough cash funds in the estate presently, to have the Administrator, Hon. Frederick G. Irtz, II, immediately disburse, in cash, to the specific legatees under Article III in the above referenced Last Will and Testament, the total is $17,338.81 to each beneficiary,

except Caleb Gross, II, whose amount is $17,203.96, subject only to the offsets of sums previously paid to or on their behalf.

3. This is a final and appealable Order.

DATED this the 30 day of July, 2001.

JUDGE, FAYETTE DISTRICT COURT

HON. STEVEN A. WIDES

HON. THOMAS BURNETT

HON. ROBERT MONK

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been sent to the following on this the 30th day of July, 2001.

HON. STEVEN A. WIDES, 107 CHURCH STREET SUITE 200, LEXINGTON, KY 40507
EUGENE GROSS, P0 BOX 1304, HARLAN, KY 40831
LILLIAN FEGHALI, P0 BOX 697, CAWOOD, KY 40815
HON. THOMAS BURNETT, 156 MARKET STREET, LEXINGTON, KY 40507

HON. ROBERT MONK, 180 PROSPEROUS PLACE, SUITE 100, LEXINGTON, KY 40509
WILLIAM W. GROSS, 6718 RUSSELL CAVE ROAD, LEXINGTON, KY 40511
HON. FREDERICK G. IRTZ, 11,111 W. SHORT STREET, LEXINGTON, KY 40507

_____
CLERK,FAYETTE DISTRICT COURT

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE THE ESTATE OF CALEB POWERS GROSS,
decedent
CASE NO: 91-P-01247

ORDER

****

This matter having come before the Court upon the Motion of the Specific Legacies, by counsel, to receive interest on their specific bequest of $10,000.00 each, and the Court having heard argument of counsel, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That each of the specific legacies as nominated under Item III of the Last Will and Testament of Caleb P. Gross shall receive interest at the rate of 8% per annum, not to be compounded annually, to be calculated as of one year after the date of Probate, pursuant to KRS 394.520.

DATED this the _____ day of February, 2001

_____
JUDGE, FAYETTE DISTRICT COURT

CC:
HON. STEVEN A. WIDES, 107 CHURCH STREET, SUITE 200, LEXINGTON, KY 40507
HON. ROBERT C. MONK, 111 W. SHORT STREET, LEXINGTON, KY 40507
HON. THOMAS BURNETT, 156 MARKET STREET, LEXINGTON, KY 40507

WILLARD D. GROSS, 6718 RUSSELL CAVE ROAD, LEXINGTON, KY 40511
EUGENE C. GROSS, POB OX 1304, HARLAN, KY 40831
LILLIAN A. GROSS FEGHALI, P0 BOX 697, CAWOOD, KY 40815
DONNA FEGHALI, P0 BOX 697, CAWOOD, KY 40815
HON. FREDERICK G. IRTZ, II, P0 BOX 22777, 111 W. SHORT STREET, LEXINGTON, KY 40522

_____

Steven A. Wides

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE THE ESTATE OF CALEB POWERS GROSS,
decedent
CASE NO: 91-P-01247

ORDER

****

This matter having come before the Court upon the Motion of the Specific Legacies, by counsel, to receive interest on their specific bequest of $10,000.00 each, and the Court having heard argument of counsel, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That each of the specific legacies as nominated under Item III of the Last Will and Testament of Caleb P. Gross shall receive interest at the rate of 8% per annum, not to be compounded annually, to be calculated as of one year after the date of Probate, pursuant to KRS 394.520.

DATED this the _____ day of February, 2001

FILED AND ENTERED APRIL 2, 2001

_____
JUDGE, FAYETTE DISTRICT COURT

CC:
HON. STEVEN A. WIDES, 107 CHURCH STREET, SUITE 200, LEXINGTON, KY 40507
HON. ROBERT C. MONK, 111 W. SHORT STREET, LEXINGTON, KY 40507
HON. THOMAS BURNETT, 156 MARKET STREET, LEXINGTON, KY 40507

WILLARD D. GROSS, 6718 RUSSELL CAVE ROAD, LEXINGTON, KY 40511
EUGENE C. GROSS, POB OX 1304, HARLAN, KY 40831
LILLIAN A. GROSS FEGHALI, P0 BOX 697, CAWOOD, KY 40815
DONNA FEGHALI, P0 BOX 697, CAWOOD, KY 40815
HON. FREDERICK G. IRTZ, II, P0 BOX 22777, 111 W. SHORT STREET, LEXINGTON, KY 40522

_____
Steven A. Wides

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDENT

CASE NO. 91-P-1247

ORDER

****

The matter being on for a hearing April 9, 1997 for the court to appoint Successor Executor in above styled matter and the court having taken testimony;

IT IS HEREBY ORDERED that an independent third party be named in the interest of all beneficiaries. The court hereby appoints the Honorable Fred Irtz, Successor Executor. This is a final and appeal order.

This the 2nd day of May 1997.

JUDGE, FAYETTE DISTRICT COURT
JULIA K. TACKETT

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDENT

CASE NO. 91-P-1247

ORDER

****

Upon Motion of Willard Gross for recusation of Judge Julia Tackett, and the Court having considered all relevant factors presented by the parties, and it appearing at this time that said Judge would have a conflict of interest by presiding herein, and the Court being sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Judge Julia Tackett does hereby recuse herself from presiding over all matters pending in the Estate of CALEB POWERS GROSS, and is relieved of all further responsibility herein. It is further directed that this matter be assigned by the Clerk to Judge Kevin M. Horne, Division Two, Fayette District Court.

Dated this 5th day of May, 1998.

_____

Julia K. Tackett, Judge

FIDUCIARY BOND

AOC-825 Doc. Code:BF
Rev. 11-95
Commonwealth of KY
Court of Justice
KRS 62.060, 395.130, 395.140,
454.180-185

Case No._____
Court-_____
County-_____

I n

Re:_____
(Address)

_____having been appointed to act as
(Name of Fiducuary)

_____by the order of_____

Court on the ____day of_____, 19____, the principal and surety do hereby covenant to and with the Commonwealth of Kentucky in the sum of $_____for the use and benefits of all parties of interest herein, and that the principal will faithfully perform and discharge all the duties of the aforesaid trust according to law.

Frederick Irtz
(Name of Principal)

111 W. Short Street
Lex. KY 40507
(Address)

For Hearing on September 24, 1997
Judge Tackett
MH

A True copy
Attest Robert M. True, Clerk
Fayette Circuit Court

By Marilyn Trayler, Clerk

Taken and subscribed before me this _____ day of _____, 19_____.

Carla Million
(Clerk)

Approved:_____
(Judge)

Robert C. Monk
(Name of Attorney)

111 W. Short St.
Lex. KY 40507

App. 29

FIDUCIARY BOND

AOC-825 Doc. Code:BF
Rev. 11-95
Commonwealth of KY
Court of Justice
KRS 62.060, 395.130, 395.140,
454.180-185

Case No. 91-P-01247
Court-District/Probate
County-Fayette

In Re: Estate of CALEB POWERS GROSS, deceased
Frederick G. Irtz, II having been appointed to act as Administrator by the order of Fayette District Court on the Retroactive 2nd day of May 1997, the principal and surety do hereby covenant to and with the Commonwealth of Kentucky in the sum of $* No funds received at this time, for the use and benefit of al parties of interest herein, and that the principal will faithfully perform and discharge all the duties of the aforesaid trust according to law.

Frederick G. Irtz, II
(Name of Principal)

111 W. Short St.
Lexington, KY 40507

Taken and subscribed before me this 2nd day of May , 1997.
Robert M. True,CFCC

By: Carla Million
(Clerk)

Approved: Julia K. Tackett
(Judge)

Robert C. Monk, Atty.

111 W. Short St.